

Panaji, 19th June, 1980 (Jyaishta 29, 1902)

SERIES II No. 12

OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN AND DIU

Department of Personnel and Administrative Reforms

Order:

No. 5/4/78-PER

Read: Govt. Order No. 5-4-78-Div. I dated 31-5-78.

In continuation of Govt. order referred to above, the Administrator of Goa, Daman and Diu is pleased to extend the deputation period of Shri W. N. Dandekar as Director of Education, Govt. of Goa, Daman and Diu, for further period from 8-9-1979 to 30-6-1980 on the existing terms and conditions.

On expiry of the above deputation period Shri W. N. Dandekar is relieved of the post of Director of Education w.e.f. 30-6-80 (A.N.) and his services are placed at the disposal of Govt. of Maharashtra.

By order and in the name of the Administrator of Goa, Daman and Diu.

Jose Philip, Joint Secretary.

Panaji, 12th June, 1980.

Order

No. 5/4/78-PER

Shri Bonfilio D'Cruz, Dy. Director of Education at present on deputation as Chairman, Secondary and Higher Secondary Education Board, Goa, Daman and Diu, is appointed on ad-hoc basis to the post of Director of Education, Govt. of Goa, Daman and Diu in the pay scale of Rs. 1500-60-1800 with effect from 1st July, 1980, until further orders.

2. The above appointment will not bestow on Shri B. D'Cruz any claim for regular appointment and the service rendered on ad-hoc basis in the grade will not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

By order and in the name of the Administrator of Goa, Daman and Diu.

Jose Philip, Joint Secretary.

Panaji, 12th June, 1980.

Works, Education and Tourism Department

Order

No. 7/3-1/78-WET

The appointment made to Shri S. L. Mali, Executive Engineer in Public Works Department Goa on deputation

from the Government of Maharashtra vide order of even number dated 9-5-80, is hereby cancelled.

By order and in the name of the Administrator of Goa, Daman and Diu.

A. V. Pimenta, Under Secretary, Works, Education & Tourism.

Panaji, 12th June, 1980.

Local Administration and Welfare Department

Corrigendum

No. 4-10-74-UDD

In Government Notification of even number dated 8th May, 1980 for the words "Joint Director General, Department of Tourism, Ministry of Tourism and Civil Aviation, New Delhi" appearing at Sr. No. 18 the words "Additional Director General, Department of Tourism, Ministry of Tourism and Civil Aviation, New Delhi" may be substituted.

By order and in the name of the Administrator of Goa, Daman and Diu.

Alexandre Pereira, Under Secretary (Revenue).

Panaji, 10th June, 1980.

Revenue Department

Notification

No. RD/LQN/107/78

Whereas by Government Notification No. RD/LQN/107/78 dated 10-7-78 published on page 116-117 of Series II, No. 15 of the Official Gazette, dated 13-7-78 it was notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") that the land, specified in the schedule appended to the said Notification (hereinafter referred to as the "said land") was likely to be needed for the public purpose viz. for implementation of Low Income Group and Middle Income Group Housing Schemes at Vasco-da-Gama.

And Whereas the appropriate Government (hereinafter referred to as "the Government") is satisfied after considering the report made under sub-section (2) of Section 5A of the said Act, that the said land specified in the schedule hereto is needed to be acquired for the public purpose specified above.

Now, Therefore, the Government is pleased to declare under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government is also pleased to appoint under clause (c) of Section 3 of the said Act, the Deputy Collector, South Goa, Margao to perform the functions of a Collector

for all proceedings hereinafter to be taken in respect of the said land, and to direct him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the said Deputy Collector, South Goa, Margao till the award is made under Section 11.

SCHEDULE
(Description of the said land)

Sr. No.	Taluka	Village	Plot No.	Chalta No. P.T.S. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
1.	Mormugao	Vasco-da-Gama	—	1 (Part) 98	Comunidade of Vadem, presently held of Shri Zoiram Bicaji Neugui.	25.137.00
	— do —	— do —	1	}	" Shri U. M. Lima Leitao.	2.467.00
	— do —	— do —	2			
	— do —	— do —	3			
	— do —	— do —	10			
	— do —	— do —	21	"	Shri Gurudas Shankar Naik.	365.00
	— do —	— do —	21 A	"	Shri Ganaba Vishwambar S. R. Dessai.	365.00
	— do —	— do —	22	"	Shri Kanta Manguesh Manerkar.	750.00
	— do —	— do —	14	}	Shri Armando Santan Pereira.	1.200.00
	— do —	— do —	4		"	Smt. Anandibai Govind Arsenkar.
						30.925.00

9

Boundaries:

North: Chalta No. 1(Part) 2(Part)/P. T. S. No. 98.
Chalta No. 1, 2, 3/P.T. Sheet No. 97.
South: Chalta No. 1(Part) / P. T. S. No. 98.
East: Chalta No. 1(Part) P. T. S. No. 98.
West: Road.

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

Smt. Suman Swarup, Secretary (Revenue).

Panaji, 13th June, 1980.

Public Health Department

Order

No. PHD/60(2)/77/Nursing

On the recommendations of Local Departmental Promotion Committee, Government is pleased to promote Miss T. U. Annama, Matron, to the post of Principal of Nursing School under the Directorate of Health Services on ad-hoc basis, post created vide Government Order of even number dated 24th January, 1978 in the pay-scale of Rs. 650-30-740-35-810-EB-35-880-40-1200.

The above appointment will not bestow on the person a claim for regular appointment and the services rendered on ad-hoc basis in the grade would not count for the purpose of seniority in that grade or eligibility for promotion to the next higher grade.

By order and in the name of the Administrator of Goa, Daman and Diu.

M. S. Sail, Under Secretary (Health).

Panaji, 3rd June, 1980.

Law Department (Legal Advice)

Notification

No. LD/2271/80

The following Notification issued by the Chairman, Administrative Tribunal, Goa is hereby published for general information of the public.

R. V. Durbhatkar, Under Secretary (Law).

Panaji, 10th June, 1980.

Notification

No. LD/4/3/73-79

In exercise of the powers conferred by regulation 3 of the Goa, Daman and Diu Administrative Tribunal Regulation, 1971, and in supersession of Notification No. LD/3/2/73-79 dated 19th April, 1980, published in Official Gazette, Series II No. 6 dated 8-5-1980, the Chairman of Administrative Tribunal hereby constitutes the following Benches with immediate effect which would sit on the days noted against them from 2.30 to 5.30 hours.

Bench No. I — Friday

Dr. M. K. Mishra — Chairman.

Smt. Suman Swarup — Member.

Bench No. II — Saturday

Dr. M. K. Mishra — Chairman.

Shri Narendra Prasad — Member.

Dr. M. K. Mishra, Chairman, Administrative Tribunal.

Panaji, 6th June, 1980.

Notification

No. LD/ORDERS/80(6)

The following Orders received from the Government of India, Ministry of Steel and Mines (Dept. of Mines), Nagpur, are hereby republished for general information of the public.

R. V. Durbhatkar, Under Secretary (Law).

Panaji, 3rd June, 1980.

GOVERNMENT OF INDIA
MINISTRY OF STEEL AND MINES
(Department of Mines)

THE CONTROLLER OF MINING LEASES FOR INDIA

Case No. Z-115.

Order

(Under Rule 6 of the Mining Leases
(Modification of Terms) Rules, 1956)

Whereas a case was registered for the modification of terms of a mining lease dated 20-4-1951 for Iron and Manganese ore held by Shri Gajanana Pondori Naique Cormoli of Cacora (Goa) for unlimited period, area 79,9350 Hectares in Village Rivona, Taluka Sanguem of Union territory of Goa, Daman and Diu.

And Whereas an enquiry has been made, as laid down in the Mining Leases (Modification of Terms) Rules, 1956.

2. It is hereby ordered under rule 6 of the aforesaid Rules that terms and conditions of the above lease shall stand modified as follows:—

(i) Period: The period of the lease shall be 20 years counting from 1-10-1963.

(ii) The following clause shall be deemed to be inserted in the lease deed and shall form part thereof:—

"Except for the modifications made by this order, the lease shall be subject to the rules made or deemed to have been made under Sections 13 and 18 of the Mines & Minerals (Regulation & Development) Act, 1957 (No. 67 of 1957)."

3. It is clarified that royalty and dead rent shall be payable in accordance with Section 9 and 9A of the Mines & Minerals (Regulation & Development) Act, 1957 respectively instead of according to the stipulations in the lease deed.

4. It is further clarified that the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent at such rate, as may be specified by the State Government under the Mineral Concession Rules, 1960.

5. This order shall take effect from the date of this order.

6. It is ordered that this order be published in the Official Gazette of Goa, Daman & Diu and copies thereof be sent to the lessee and the State Government.

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.

Nagpur:

Dated the 29 April, 1980.

Note Embodying the Facts of Case, Pleas of the Parties and the Reasons for the Order:

Case No Z-115 order dated 29 April, 1980.

Name of the lessee: Shri Gajanana Pondori Naique Cormoli, Mine Owner, Cacora (Goa).

Date of the lease: Title No. 35 of mining lease dated 20-4-1951.

Mineral: Iron and Manganese ore.

Area and Location: 79.9350 hectares in Village-Rivona, Taluka-Sanguem (Goa).

Period: Unlimited.

Apart from the insertion of the general clause, the following was the proposal contained in the show cause notice issued to the lessee for modification of the mining lease referred to above.

(i) Period: To be reduced to 20 years counting from 1-10-1963.

2. In pursuance of rule 6 of the Mining Leases (Modification of Terms) Rules, 1956, the show cause notice containing the proposals for modification of the above mentioned mining lease was sent to the lessee — Shri Gajanana Pondori Naique

Cormoli and the lessor — the Government of Goa, Daman and Diu, calling upon them to show cause why such modifications/alterations should not be made in the mining lease deed dated 20-4-1951 held by the lessee.

3. The case was also taken up for hearing on 19-1-1979 for enabling both the parties to put forward their case.

4. The Government of Goa, Daman and Diu have expressed that they have no objection for the proposal to modify mining concessions granted under the erstwhile Portuguese Law into mining leases under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957.

5. At the time of hearing, the learned counsel on behalf of the lessee, however, requested for stay of modification proceedings in his client's case till the Special Civil Applications preferred by the other Goa-lessees are decided by the Judicial Commissioner, Goa, Daman and Diu. In the interest of expediting the modification work, I do not consider it expedient to keep this case pending indefinitely on the plea raised by the advocate.

6. I have however, given my careful consideration to the objections embodied by the lessee in his objection-petition dated 16-9-1978, and, in my view, they have got no force on the basis of my findings given hereunder:

(a) As regards the lessee's contention that he has patrimonial rights over his mining concession and apart from being transferable and heritable are in effect proprietary rights, it is stated that Article 2 of the Portuguese Colonial Mining Laws approved by the Decree dated 20th September, 1906 makes it clear that the proprietorship of deposits of metals and metalliferous minerals belongs to the State and such beds cannot be prospected or worked without licence and concession by Government in terms of the said Decree. Moreover, the concession granted for unlimited period is liable to be cancelled, if the concessionaire fails to comply with the conditions which the law and the title of concession impose on him. Besides, the point whether the interests and rights conferred on the lessee by the erstwhile Portuguese Colonial Mining laws are a lease or are in the nature of an outright grant or sale, has been concluded beyond doubt in the order dated 15-5-1975 of the Central Government Tribunal on the revision-applications filed by the grantees of such mining leases. In view of these, the lessee's contention that he has full proprietary rights on the Government land does not merit any consideration.

(b) The lessee further contends that under clause 2 of Section 4 of the 1962 Regulation, any right acquired under the 1906 Decree is not affected, but saved inspite of extension of the Mines & Minerals (Regulation & Development) Act, 1957, as such right is a vested and subsisting right. In this connection, it is stated that the old Portuguese Mining Laws stands completely repealed with the extension of Mines & Minerals (Regulation & Development) Act, 1957 to the Union territory of Goa, Daman and Diu. Accordingly, the modification of old mining leases in the said territory for bringing those in conformity with the provisions of the said Act of 1957 and the rules made thereunder cannot be stopped and will have to be carried out keeping in view that Section 16 of the said Act was enforced there with effect from 15-1-1956.

(c) As regards the lessee's contention that he holds a mining concession and not a mining lease and that the Mines & Minerals (Regulation and Development) Act, 1957 does not apply to the mining concession held by him, it is stated that "mining concession" granted under the Portuguese Colonial Mining Laws and "mining lease" granted under the Mines and Minerals (Regulation & Development) Act, 1957 are the same. Both in Goa at the time of erstwhile Portuguese Regime, and in India, the ownership of the mineral rights vests with the Government and that minerals cannot be prospected or mined without licence or concession granted in Goa or without the lease granted in India. Under both the laws (the Mines & Minerals (Regulation & Development) Act of India and the Portuguese Colonial Mining Laws), the right to continued retention of the concession in Goa or the lease in India is subject to the fulfilment of a number of stipulations, failure to comply with which, may result in the forfeiture

of the mining rights. In such cases, the ownership of the concession is reverted to the State. Moreover in Article 9 of the Portuguese Colonial Mining Laws, the concessionaires have been equated with the lessees. Paras 3 to 8 of the Central Government Tribunal order dated 15-5-1975 on this point also supports the fact that the mining concession and the mining lease are synonymous. In view of the position stated above, the applicability of the Act of 1957 to the concessions is beyond doubt.

- (d) Further, the lessee's contention that the provision of Section 16 of the Mines & Minerals (Regulation & Development) Act, 1957 as substituted by the 1972 Amended Act are ultra vires of the Article 31(2) of the Constitution, as no provision is made in the Act for any compensation for modification of the period of the lease. In this connection, it is clarified that a mining lease is not a proprietary right, because the ownership of minerals in land always belongs to the State. A mining right merely confers on the lessee a right to exploit the minerals in accordance with certain stipulations in the lease-agreement. For this reason, there cannot be any money value for reduction of the period of the mining lease held by the lessee.

Moreover, Article 31A(1)(e) of the Constitution provides *inter-alia* that no law providing for the extinguishment or modification of any rights accruing by virtue of any lease for winning any mineral shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, 19 or 31 of the Constitution.

7. In view of the above, I hold the so-called mining concessions of the Goa-territory as mining leases. The concessions granted by the erstwhile Portuguese Government are in essence mining leases. Further, I see no valid reason in the lessee's contention protesting the applicability of the provisions of the Mines and Minerals (Regulation & Development) Act, 1957 to his so-called concession. In this regard, it is stated that the Mines and Minerals (Regulation and Development) Act, 1957 (excluding Section 16) was extended to the Union territory of Goa, Daman and Diu with effect from 1-10-1963, and Section 16 thereof from 15-1-1966. As Section 16 of the Act confers the power for modification of the mining leases to be brought into conformity with the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the rules made thereunder, the mining lease dated 20-4-1951 held by the lessee cannot escape modification. Since the period of the mining lease in question is not in agreement with the provision of Section 8 of the Mines and Minerals (Regulation & Development) Act, 1957 it needs to be reduced to 20 years from 1-10-1963, the date from which the Mines and Minerals (Regulation and Development) Act, 1957 was extended to the Union territory of Goa, Daman and Diu. Therefore, the proposal made in the show cause notice relating to curtailment of the period of the mining lease dated 20-4-1951 is in accordance with law.

8. In my view, no adequate reason has been shown for a departure from the proposals contained in the show cause notice.

Order passed accordingly,

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.

Case No. Z-512.

Order

(Under Rule 6 of the Mining Leases
(Modification of Terms) Rules, 1956)

Whereas a case was registered for the modification of terms of a mining lease dated 2-5-1956 for Iron and Manganese ore held by Smt. Savitribai Roguvir Lotlecar, Administrator of late Shri Roguvir Naraina Lotlecar of Margao (Goa), for unlimited period, area 24,6000 Hectares in Village Carapur, Taluka Bicholim of Union territory of Goa, Daman and Diu.

And Whereas an enquiry has been made, as laid down in the Mining Leases (Modification of Terms) Rules, 1956.

2. It is hereby ordered under rule 6 of the aforesaid Rules that terms and conditions of the above lease shall stand modified as follows:—

(i) Period: The period shall be 20 years counting from 1-10-1963.

(ii) The following clause shall be deemed to be inserted in the lease deed and shall form part thereof:—

"Except for the modifications made by this order, the lease shall be subject to the rules made or deemed to have been made under Sections 13 and 18 of the Mines & Minerals (Regulation & Development) Act, 1957 (No. 67 of 1957)."

3. It is clarified that royalty and dead rent shall be payable in accordance with Section 9 and 9A of the Mines & Minerals (Regulation & Development) Act, 1957 respectively instead of according to the stipulations in the lease deed.

4. It is further clarified that the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent at such rate, as may be specified by the State Government under the Mineral Concession Rules, 1960.

5. This order shall take effect from the date of this order.

6. It is ordered that this order be published in the Official Gazette of Goa, Daman & Diu and copies thereof be sent to the lessee and the State Government.

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India

Nagpur:

Dated the 29 April, 1980.

Note Embodying the Facts of Case, Pleas of the Parties and Reasons for the Order:

Case No. Z-512: Order dated 29 April, 1980.

Name of the lessee: Smt. Savitribai Roguvir Lotlecar, Administrator of late Shri Roguvir Naraina Lotlecar, Post Box No. 25, Margao (Goa).

Date of the lease: Title No. 23 of mining lease dated 2-5-1956.

Mineral: Iron and Manganese Ore.

Area and Location: 24,6000 hectares in Village-Carapur, Taluka-Bicholim (Goa).

Period: Unlimited.

Apart from the insertion of the general clause, the following was the proposal contained in the show cause notice issued to the lessee for modification of the mining lease referred to above.

(i) Period: To be reduced to 20 years counting from 1-10-1963.

2. In pursuance of rule 6 of the Mining Leases (Modification of Terms) Rules, 1956, the show cause notice containing the proposals for modification of the above mentioned mining lease was sent to the lessee—Shri Roguvir Naraina Lotlecar (now deceased), and the lessor—the Government of Goa, Daman and Diu, calling upon them to show cause why such modifications/alterations should not be made in the mining lease deed dated 2-5-1956 held by the lessee.

3. The case was also taken up for hearing on 20-1-1979 and 14-2-1980 for enabling both the parties to put forward their case.

4. The Government of Goa, Daman and Diu have expressed that they have no objection for the proposal to modify mining concessions granted under the erstwhile Portuguese Law into mining leases under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957.

5. In her capacity as the Administrator appointed by the Court in respect of the property of her husband—late Shri Roguvir Naraina Lotlecar, Smt. Savitribai Lotlecar objected to the modification proposals contained in the show cause notice, vide her objection petition dated 20-9-1978.

6. At the time of hearing held on 20-1-1979, the learned counsel on behalf of Smt. Savitribai Lotlekar clearly told that he has no more objections to urge than what his client has stated in her objection-petition referred to above. He however, requested for stay of modification proceedings in his client's case till the Special Civil Applications preferred by the other Goa-lessees are decided by the Judicial Commissioner, Goa, Daman and Diu. In the interest of expediting the modification work, I do not consider it expedient to keep this case pending indefinitely on the plea raised by the advocate.

7. I have, however, given my careful consideration to the objections embodied by the lessee in her objection-petition dated 20-9-1978, and in my view, they have got no force on the basis of my findings given hereunder:

(a) As regards the lessee's contention that he has patrimonial rights over his mining concession and apart from being transferable and heritable are in effect proprietary rights, it is stated that Article 2 of the Portuguese Colonial Mining Laws approved by the Decree dated 20th September, 1906 makes it clear that the proprietorship of deposits of metals and metalliferous minerals belongs to the State and such beds cannot be prospected or worked without licence and concession by Government in terms of the said Decree. Moreover, the concession granted for unlimited period is liable to be cancelled, if the concessionaire fails to comply with the conditions which the law and the title of concession impose on him. Besides, the point whether the interests and rights conferred on the lessee by the erstwhile Portuguese Colonial Mining Laws are a lease or are in the nature of an outright grant or sale, has been concluded beyond doubt in the order dated 15-5-1975 of the Central Government Tribunal on the revision-applications filed by the grantees of such mining leases. In view of these, the lessee's contention that he has full proprietary rights on the Government land does not merit any consideration.

(b) The lessee further contends that under clause 2 of Section 4 of the 1962 Regulation, any right acquired under the 1906 Decree is not affected, but saved inspite of extension of the Mines & Minerals (Regulation & Development) Act, 1957, as such right is a vested and subsisting right. In this connection, it is stated that the old Portuguese Mining Laws stands completely repealed with the extension of Mines & Minerals (Regulation & Development) Act, 1957 to the Union territory of Goa, Daman and Diu. Accordingly, the modification of old mining leases in the said territory for bringing those in conformity with the provisions of the said Act of 1957 and the rules made thereunder cannot be stopped and will have to be carried out keeping in view that Section 16 of the said Act was enforced there with effect from 15-1-1966.

(c) As regards the lessee's contention that he holds a mining concession and not a mining lease and that the Mines & Minerals (Regulation and Development) Act, 1957 does not apply to the mining concession held by him, it is stated that "mining concession" granted under the Portuguese Colonial Mining Laws and "mining lease" granted under the Mines and Minerals (Regulation & Development) Act, 1957 are the same. Both in Goa at the time of erstwhile Portuguese Regime, and in India, the ownership of the mineral rights vests with the Government and that minerals cannot be prospected or mined without licence or concession granted in Goa or without the lease granted in India. Under both the laws (the Mines & Minerals (Regulation & Development) Act of India and the Portuguese Colonial Mining Laws), the right to continued retention of the concession in Goa or the lease in India is subject to the fulfilment of a number of stipulations, failure to comply with which, may result in the forfeiture of the mining rights. In such cases, the ownership of the concession is reverted to the State. Moreover in Article 9 of the Portuguese Colonial Mining Laws, the concessionaires have been equated with the lessees. Paras 3 to 8 of the Central Government Tribunal order dated 15-5-1975 on this point also supports the fact that the mining concession and

the mining lease are synonymous. In view of the position stated above, the applicability of the Act of 1957 to the concessions is beyond doubt.

8. In view of the above, I hold the so-called mining concessions of the Goa-territory as mining leases. The concessions granted by the erstwhile Portuguese Government are in essence mining leases. Further, I see no valid reason in the lessee's contention protesting the applicability of the provisions of the Mines & Minerals (Regulation & Development) Act, 1957 to his so-called concession. In this regard, it is stated that the Mines & Minerals (Regulation & Development) Act, 1957 (excluding Section 16) was extended to the Union territory of Goa, Daman and Diu with effect from 1-10-1963, and Section 16 thereof from 15-1-1966. As Section 16 of the Act confers the power for modification of the mining leases to be brought into conformity with the provisions of the Mines & Minerals (Regulation & Development) Act, 1957 and the rules made thereunder, the mining lease dated 2-5-1956 held by the lessee cannot escape modification. Since the period of the mining lease in question is not in agreement with the provision of Section 8 of the Mines & Minerals (Regulation & Development) Act, 1957 it needs to be reduced to 20 years from 1-10-1963, the date from which the Mines & Minerals (Regulation & Development) Act, 1957 was extended to the Union territory of Goa, Daman and Diu. Therefore, the proposal made in the show cause notice relating to curtailment of the period of the mining lease dated 2-5-1956 is in accordance with law.

9. In my view, no adequate reason has been shown for a departure from the proposals contained in the show cause notice.

Order passed accordingly,

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.

Case No. Z-511.

Order

(Under Rule 6 of the Mining Leases
(Modification of Terms) Rules, 1956)

Whereas a case was registered for the modification of terms of a mining lease dated 2-5-1956 for Iron and Manganese ore held by Smt. Savitribai Roguvir Lotlekar, Administrator of late Shri Roguvir Naraina Lotlekar of Margao (Goa) for unlimited period, area 97.2100 Hectares in Village Gangem, Taluka Satari of Union territory of Goa, Daman and Diu.

And Whereas an enquiry has been made, as laid down in the Mining Leases (Modification of Terms) Rules, 1956.

2. It is hereby ordered under rule 6 of the aforesaid Rules that terms and conditions of the above lease shall stand modified as follows:—

(i) Period:—The period shall be 20 years counting from 1-10-1963.

(ii) The following clause shall be deemed to be inserted in the lease deed and shall form part thereof:—

"Except for the modifications made by this order, the lease shall be subject to the rules made or deemed to have been made under Sections 13 and 18 of the Mines & Minerals (Regulation & Development) Act, 1957 (No. 67 of 1957)."

3. It is clarified that royalty and dead rent shall be payable in accordance with Section 9 and 9A of the Mines & Minerals (Regulation & Development) Act, 1957 respectively instead of according to the stipulations in the lease deed.

4. It is further clarified that the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent at such rate, as may be specified by the State Government under the Mineral Concession Rules, 1960.

5. This order shall take effect from the date of this order.

6. It is ordered that this order be published in the Official Gazette of Goa, Daman & Diu and copies thereof be sent to the lessee and the State Government.

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.

Nagpur:

Dated the 29 April, 1980.

Note Embodying the Facts of Case, Pleas of the Parties and the Reasons for the Order:

Case No. Z-511. Order dated 29 April 1980.

Name of the lessee: Smt. Savitribai Roguvir Lotlekar, Administrator of late Shri Roguvir Naraina Lotlekar, Post Box No. 25, Margao (Goa).

Date of the lease: Title No. 22 of mining lease dated 2-5-1956.

Mineral: Iron and Manganese ore.

Area and Location: 97.2100 hectares in Village—Gangem, Taluka—Satari (Goa).

Period: Unlimited.

Apart from the insertion of the general clause, the following was the proposal contained in the show cause notice issued to the lessee for modification of the mining lease referred to above.

- (i) Period: To be reduced to 20 years counting from 1-10-1963.

2. In pursuance of rule 6 of the Mining Leases (Modification of Terms) Rules, 1956, the show cause notice containing the proposals for modification of the above mentioned mining lease was sent to the lessee—Shri Roguvir Naraina Lotlekar (now deceased), and the lessor—the Government of Goa, Daman and Diu, calling, upon them to show cause why such modification/alterations should not be made in the mining lease deed dated 2-5-1956 held by the lessee.

3. The case was also taken up for hearing on 20-1-1979 and 14-2-1980 for enabling both the parties to put forward their case.

4. The Government of Goa, Daman and Diu have expressed that they have no objection for the proposal to modify mining concessions granted under the erstwhile Portuguese Law into mining leases under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957.

5. In her capacity as the Administrator appointed by the Court in respect of the property of her husband—late Shri Roguvir Naraina Lotlekar, Smt. Savitribai Lotlekar objected to the modification proposals contained in the show cause notice, vide her objection petition dated 20-9-1978.

6. At the time of hearing held on 20-1-1979, the learned counsel on behalf of Smt. Savitribai Lotlekar clearly told that he has no more objections to urge than what his client has stated in her objection-petition referred to above. He however, requested for stay of modification proceedings in his client's case till the Special Civil Applications preferred by the other Goa-lessees are decided by the Judicial Commissioner, Goa, Daman and Diu. In the interest of expediting the modification work, I do not consider it expedient to keep this case pending indefinitely on the plea raised by the advocate.

7. I have, however, given my careful consideration to the objections embodied by the lessee in her objection-petition dated 20-9-1978, and in my view, they have got no force on the basis of my findings given hereunder:

- (a) As regards the lessee's contention that he has patrimonial rights over his mining concession and apart from being transferable and heritable are in effect proprietary rights, it is stated that Article 2 of the Portuguese Colonial Mining Laws approved by the Decree dated 20th September, 1906 makes it clear that the proprietorship of deposits of metals and metalliferous minerals belongs to the State and such beds cannot be prospected or worked without licence and concession by Government in terms of the said

Decree. Moreover, the concession granted for unlimited period is liable to be cancelled, if the concessionaire fails to comply with the conditions which the law and the title of concession impose on him. Besides, the point whether the interests and rights conferred on the lessee by the erstwhile Portuguese Colonial Mining laws are a lease or are in the nature of an outright grant or sale, has been concluded beyond doubt in the order dated 15-5-1975 of the Central Government Tribunal on the revision-applications filed by the grantees of such mining leases. In view of these, the lessee's contention that he has full proprietary rights on the Government land does not merit any consideration.

- (b) The lessee further contends that under clause 2 of Section 4 of the 1962 Regulation, any right acquired under the 1906 Decree is not affected, but saved inspite of extension of the Mines & Minerals (Regulation & Development) Act, 1957, as such right is a vested and subsisting right. In this connection, it is stated that the old Portuguese Mining Laws stands completely repealed with the extension of Mines & Minerals (Regulation & Development) Act, 1957 to the Union territory of Goa, Daman and Diu. Accordingly, the modification of old mining leases in the said territory for bringing those in conformity with the provisions of the said Act of 1957 and the rules made thereunder cannot be stopped and will have to be carried out keeping in view that Section 16 of the said Act was enforced there with effect from 15-1-1966.

- (c) As regards the lessee's contention that he holds a mining concession and not a mining lease and that the Mines & Minerals (Regulation and Development) Act, 1957 does not apply to the mining concession held by him, it is stated that "mining concession" granted under the Portuguese Colonial Mining Laws and "mining lease" granted under the Mines and Minerals (Regulation & Development) Act, 1957 are the same. Both in Goa at the time of erstwhile Portuguese Regime, and in India, the ownership of the mineral rights vests with the Government and that minerals cannot be prospected or mined without licence or concession granted in Goa or without the lease granted in India. Under both the laws (the Mines & Minerals (Regulation & Development) Act of India and the Portuguese Colonial Mining Laws), the right to continued retention of the concession in Goa or the lease in India is subject to the fulfilment of a number of stipulations, failure to comply with which, may result in the forfeiture of the mining rights. In such cases, the ownership of the concession is reverted to the State. Moreover in Article 9 of the Portuguese Colonial Mining Laws, the concessionaires have been equated with the lessees. Paras 3 to 8 of the Central Government Tribunal order dated 15-5-1975 on this point also supports the fact that the mining concession and the mining lease are synonymous. In view of the position stated above, the applicability of the Act of 1957 to the concessions is beyond doubt.

8. In view of the above, I hold the so-called mining concessions of the Goa-territory as mining leases. The concessions granted by the erstwhile Portuguese Government are in essence mining leases. Further, I see no valid reason in the lessee's contention protesting the applicability of the provisions of the Mines & Minerals (Regulation & Development) Act, 1957 to his so-called concession. In this regard, it is stated that the Mines & Minerals (Regulation & Development) Act, 1957 (excluding Section 16) was extended to the Union territory of Goa, Daman and Diu with effect from 1-10-1963, and Section 16 thereof from 15-1-1966. As Section 16 of the Act confers the power for modification of the mining leases to be brought into conformity with the provisions of the Mines & Minerals (Regulation & Development) Act, 1957 and the rules made thereunder, the mining lease dated 2-5-1956 held by the lessee cannot escape modification. Since the period of the mining lease in question is not in agreement with the provision of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 it needs to be reduced to 20 years from 1-10-1963, the date from which the Mines and Minerals (Regulation & Development) Act, 1957 was extended to the Union territory of Goa, Daman and Diu. Therefore, the proposal made in the show cause notice relating to curtailment of the period of the mining lease dated 2-5-1956 is in accordance with law.

9. In my view, no adequate reason has been shown for a departure from the proposals contained in the show cause notice.

Order passed accordingly,

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.

Case No. Z-691.

Order

(Under Rule 6 of the Mining Leases
(Modification of Terms) Rules, 1956)

Whereas a case was registered for the modification of terms of a mining lease dated 9-5-1959 for Iron and Manganese ore held by Shri Xembu Govinda Sinai Cuvelcar of Panaji (Goa) for unlimited period, area 23.3240 Hectares in Village Curdi, Taluka Sanguem of Union territory of Goa, Daman and Diu.

And Whereas an enquiry has been made, as laid down in the Mining Leases (Modification of Terms) Rules, 1956.

2. It is hereby ordered under rule 6 of the aforesaid Rules that terms and conditions of the above lease shall stand modified as follows:—

(i) Period: The period of the lease shall be 20 years counting from 1-10-1963.

(ii) The following clause shall be deemed to be inserted in the lease deed and shall form part thereof:—

"Except for the modifications made by this order, the lease shall be subject to the rules made or deemed to have been made under Sections 13 and 18 of the Mines & Minerals (Regulation & Development) Act, 1957 (No. 67 of 1957)."

3. It is clarified that royalty and dead rent shall be payable in accordance with Section 9 and 9A of the Mines & Minerals (Regulation & Development) Act, 1957 respectively instead of according to the stipulations in the lease deed.

4. It is further clarified that the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent at such rate, as may be specified by the State Government under the Mineral Concession Rules, 1960.

5. This order shall take effect from the date of this order.

6. It is ordered that this order be published in the Official Gazette of Goa, Daman & Diu and copies thereof be sent to the lessee and the State Government.

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.

Nagpur:

Dated the 29 April, 1980.

Note Embodying the Facts of Case, Pleas of the Parties and the Reasons for the Order:

Case No. Z-691. Order dated 29 April 1980.

Name of the lessee: Shri Xembu Govinda Sinai Cuvelcar, Mine Owner, Fountains, Dr. Francisco de Almeida Road, Panaji-403 001.

Date of the lease: Title No. 11 of mining lease dated 9-5-1959.

Mineral: Iron and Manganese.

Area and Location: 23.3240 hectares in Village—Curdi, Taluka—Sanguem (Goa).

Period: Unlimited.

Apart from the insertion of the general clause, the following was the proposal contained in the show cause notice issued to the lessee for modification of the mining lease referred to above.

(i) Period: To be reduced to 20 years counting from 1-10-1963.

2. In pursuance of rule 6 of the Mining Leases (Modification of Terms) Rules, 1956, the show cause notice containing the proposals for modification of the above mentioned mining lease was sent to the lessee - Shri Xembu Govinda Sinai Cuvelcar and the lessor - the Government of Goa, Daman & Diu, calling upon them to show cause why such modifications/alterations should not be made in the mining lease deed dated 9-5-1959 held by the lessee.

3. The case was also taken up for hearing on 18-1-1979 and 13-2-1980 for enabling both the parties to put forward their case.

4. The Government of Goa, Daman and Diu have expressed that they have no objection for the proposal to modify mining concessions granted under the erstwhile Portuguese Law into mining leases under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957.

5. The lessee has objected to the modification proposals contained in the Show cause notice, vide his objection-petition dated 21-9-1978 but remained unrepresented at the time of hearing of his case held on 18-1-1979. Another opportunity was therefore afforded to him to attend the hearing of his case on 13-2-1980 so as to enable him to put forward his case if he so desires, but he remained absent on that date also. His continuous absence at both the hearings clearly shows that he has nothing more to add or say anything more to what he has already mentioned in his objection-petition dated 21-9-1978. In the circumstances, I see no other alternative except to consider the objections raised by the lessee in his objection petition referred to above. On going through the objection-petition submitted by the lessee, I find that none of the objections embodied therein is valid.

6. My findings on the various objections raised by the lessee are as follows:—

(a) As regards the lessee's contention that he has patrimonial rights over his mining concession and apart from being transferable and heritable are in effect proprietary rights, it is stated that Article 2 of the Portuguese Colonial Mining Laws approved by the Decree dated 20th September, 1906 makes it clear that the proprietorship of deposits of metals and metalliferous minerals belongs to the State and such beds cannot be prospected or worked without licence and concession by Government in terms of the said Decree. Moreover, the concession granted for unlimited period is liable to be cancelled, if the concessionaire fails to comply with the conditions which the law and the title of concession impose on him. Besides, the point whether the interests and rights conferred on the lessee by the erstwhile Portuguese Colonial Mining Laws are a lease or are in the nature of an outright grant or sale, has been concluded beyond doubt in the order dated 15-5-1975 of the Central Government Tribunal on the revision-applications filed by the grantees of such mining leases. In view of these, the lessee's contention that he has full proprietary rights on the Government land does not merit any consideration.

(b) The lessee further contends that under clause 2 of Section 4 of the 1962 Regulation, any right acquired under the 1906 Decree is not affected, but saved inspite of extension of the Mines & Minerals (Regulation & Development) Act, 1957, as such right is a vested and subsisting right. In this connection, it is stated that the old Portuguese Mining Laws stands completely repealed with the extension of Mines & Minerals (Regulation & Development) Act, 1957 to the Union territory of Goa, Daman and Diu. Accordingly, the modification of old mining leases in the said territory for bringing those in conformity with the provisions of the said Act of 1957 and the rules made thereunder cannot be stopped and will have to be carried out keeping in view that Section 16 of the said Act was enforced there with effect from 15-1-1956.

(c) As regards the lessee's contention that he holds a mining concession and not a mining lease and that the Mines & Minerals (Regulation and Development) Act, 1957 does not apply to the mining concession held by him, it is stated that "mining concession" granted under the Portuguese Colonial Mining Laws and "mining lease" granted under the Mines and Minerals (Regulation & Development) Act, 1957 are the same. Both in Goa at the time of erstwhile

Portuguese Regime, and in India, the ownership of the mineral rights vests with the Government and that minerals cannot be prospected or mined without licence or concession granted in Goa or without the lease granted in India. Under both the laws (the Mines & Minerals (Regulation & Development) Act of India and the Portuguese Colonial Mining Laws), the right to continued retention of the concession in Goa or the lease in India is subject to the fulfilment of a number of stipulations, failure to comply with which, may result in the forfeiture of the mining rights. In such cases, the ownership of the concession is reverted to the State. Moreover in Article 9 of the Portuguese Colonial Mining Laws, the concessionaires have been equated with the lessees. Paras 3 to 8 of the Central Government Tribunal order dated 15-5-1975 on this point also supports the fact that the mining concession and the mining lease are synonymous. In view of the position stated above, the applicability of the Act of 1957 to the concessions is beyond doubt.

- (d) Further, the lessee's contention that the provision of Section 16 of the Mines & Minerals (Regulation & Development) Act, 1957 as substituted by the 1972 Amended Act are ultra vires of the Article 31(2) of the Constitution, as no provision is made in the Act for any compensation for modification of the period of the lease. In this connection, it is clarified that a mining lease is not a proprietary right, because the ownership of minerals in land always belongs to the State. A mining right merely confers on the lessee a right to exploit the minerals in accordance with certain stipulations in the lease-agreement. For this reason, there cannot be any money value for reduction of the period of the mining lease held by the lessee.

Moreover, Article 31A(1)(e) of the Constitution provides *inter-alia* that no law providing for the extinguishment or modification of any rights accruing by virtue of any lease for winning any mineral shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, 19 or 31 of the Constitution.

7. In view of the above, I hold the so-called mining concessions of the Goa-territory as mining leases. The concessions granted by the erstwhile Portuguese Government are in essence mining leases. Further, I see no valid reason in the lessee's contention protesting the applicability of the provisions of the Mines & Minerals (Regulation and Development) Act, 1957 to his so-called concession. In this regard, it is stated that the Mines & Minerals (Regulation & Development) Act, 1957 (excluding Section 16) was extended to the Union territory of Goa, Daman and Diu with effect from 1-10-1963, and Section 16 thereof from 15-1-1966. As Section 16 of the Act confers the power for modification of the mining leases to be brought into conformity with the provisions of the Mines & Minerals (Regulation & Development) Act, 1957 and the rules made thereunder, the mining lease dated 9-5-1959 held by the lessees cannot escape modification. Since the period of the mining lease in question is not in agreement with the provision of Section 8 of the Mines & Minerals (Regulation & Development) Act, 1957 it needs to be reduced to 20 years from 1-10-1963, the date from which the Mines & Minerals (Regulation & Development) Act, 1957 was extended to the Union territory of Goa, Daman and Diu. Therefore, the proposal made in the show cause notice relating to curtailment of the period of the mining lease dated 9-5-1959 is in accordance with law.

8. In my view, no adequate reason has been shown for a departure for the proposals contained in the show cause notice.

Order passed accordingly,

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.

Case No. Z-275.

Order

(Under Rule 6 of the Mining Leases
(Modification of Terms) Rules, 1956)

Whereas a case was registered for the modification of terms of a mining lease dated 13-3-1953 for Iron and Manganese ore held by Shri Damodar Jaganata Amoncar of Margao (Goa) for unlimited period, area 22,6500 Hectares in Village Sancordem, Taluka Sanguem of Union territory of Goa, Daman and Diu.

And Whereas an enquiry has been made, as laid down in the Mining Leases (Modification of Terms) Rules, 1956.

2. It is hereby ordered under rule 6 of the aforesaid Rules that terms and conditions of the above lease shall stand modified as follows:—

(i) Period:—The period of the lease shall be 20 years counting from 1-10-1963.

(ii) The following clause shall be deemed to be inserted in the lease deed and shall form part thereof:—

"Except for the modifications made by this order, the lease shall be subject to the rules made or deemed to have been made under Sections 13 and 18 of the Mines & Minerals (Regulation & Development) Act, 1957 (No. 67 of 1957)."

3. It is clarified that royalty and dead rent shall be payable in accordance with Section 9 and 9A of the Mines & Minerals (Regulation & Development) Act, 1957 respectively instead of according to the stipulations in the lease deed.

4. It is further clarified that the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent at such rate, as may be specified by the State Government under the Mineral Concession Rules, 1960.

5. This order shall take effect from the date of this order.

6. It is ordered that this order be published in the Official Gazette of Goa, Daman & Diu and copies thereof be sent to the lessee and the State Government.

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.

Nagpur:

Dated the 29 April, 1980.

Note Embodying the Facts of Case, Pleas of the Parties and the Reasons for the Order:

Case No. Z-275. Order dated 29 April 1980.

Name of the lessee: Shri Damodar Jaganata Amoncar; Mine Owner, Margao (Goa).

Date of the lease: Title No. 22 of mining lease dated 13-3-1953.

Mineral: Iron and Manganese ore.

Area & Location: 22.6500 hectares in Village — Sancordem, Taluka — Sanguem (Goa).

Period: Unlimited.

Apart from the insertion of the general clause, the following was the proposal contained in the show cause notice issued to the lessee for modification of the mining lease referred to above.

(i) Period: To be reduced to 20 years counting from 1-10-1963.

2. In pursuance of rule 6 of the Mining Leases (Modification of Terms) Rules, 1956, the show cause notice containing the proposals for modification of the above mentioned mining lease was sent to the lessee—Shri Damodar Jaganata Amoncar and the lessor—the Government of Goa, Daman and Diu, calling upon them to show cause why such modifications/alterations should not be made in the mining lease deed dated 13-3-1953.

3. The case was also taken up for hearing on 19-1-1979 for enabling both the parties to put forward their case.

4. The Government of Goa, Daman and Diu have expressed that they have no objection for the proposal to modify mining concessions granted under the erstwhile Portuguese Law into mining leases under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957.

5. At the time of hearing, the learned counsel on behalf of the lessee requested for stay of modification proceedings in his client's case till the Special Civil Applications preferred by the other Goa-lessees are decided by the Judicial Commissioner, Goa, Daman and Diu, and added that he has nothing more to say to what his client has mentioned in his objection-petition dated 8-9-1978. In the interest of expediting the modification work, I do not consider it expedient to keep this case pending indefinitely on the plea raised by the advocate.

6. I have, also given my careful consideration to the objections embodied by the lessee in his objection-petition dated 8-9-1978, and, in my view, they have got no force on the basis of my findings given hereunder:

(a) As regards the lessee's contention that he holds a mining concession and not a mining lease, and that the Mines and Minerals (Regulation & Development) Act, 1957 does not apply to the mining concession held by him, it is stated that "mining concession" granted under the Portuguese Colonial Mining Laws and "mining lease" granted under the Mines and Minerals (Regulation & Development) Act, 1957 are the same. Both in Goa at the time of erstwhile Portuguese Regime, and in India, the ownership of the mineral rights vests with the Government and that minerals cannot be prospected or mined without a licence or concession granted in Goa or without the lease granted in India. Under both the Laws (the Mines & Minerals (Regulation & Development) Act of India and the Portuguese Colonial Mining Laws), the right to continued retention of the concession in Goa or the lease in India is subject to the fulfilment of a number of stipulations, failure to comply with which, may result in the forfeiture of the mineral rights. In such cases, the ownership of the concession is reverted to the State. Moreover, in Article 9 of the Portuguese Colonial Mining Laws, the concessionaires have been equated with the lessees. Paras 3 to 8 of the Central Government Tribunal Order dated 15-5-1975 also support the fact that the mining concession and the mining lease are synonymous.

(b) In connection with the next objection urged by the lessee that the rights of the concessionaires are of patrimonial nature and apart from being transferable and heritable are in effect proprietary rights, it is stated that Article 2 of the Portuguese Colonial Mining Laws approved by the Decree of 20th September, 1906 makes it clear that the proprietorship of deposits of metals and metalliferous minerals belongs to the State and such beds cannot be prospected or worked without licence and concession by Government in terms of the said Decree. Moreover, the concession granted for unlimited period is liable to be cancelled, if the concessionaire fails to comply with the conditions which the law and the title of concession impose on him. Besides, the point whether the interests and rights conferred on the lessee by the erstwhile Portuguese Colonial Mining Laws are a lease or are in the nature of an outright grant or sale, has been concluded beyond doubt in the order dated 15-5-1975 of the Central Government Tribunal on the revision-applications filed by the grantees of such mining leases. In view of these, the lessee's contention that he has full proprietary rights on the Government land does not have any substance.

7. In the end, it is stated that the Mines and Minerals (Regulation and Development) Act, 1957 has been extended to the Union territory of Goa, Daman and Diu, vide notifications dated 30-9-1963 and 4-1-1966 issued by the Government of Goa, Daman and Diu. The Section 16 of the said Act confers the power for modification of mining leases of the said territory and since the modification proposals contained in the show cause notice are in accordance with the provisions of the Mines and Minerals (Regulation & Development) Act, 1957 and the rules made thereunder, I see no reason

to depart from the modification proposals contained in the show cause notice.

Order passed accordingly,

Sd/-

(H. N. WANARE)
Controller of Mining Leases for India.

Case No. Z-247.

Order

(Under Rule 6 of the Mining Leases
(Modification of Terms) Rules, 1956)

Whereas a case was registered for the modification of terms of a mining lease dated 5-12-1952 (T.T. 3-5-1954) for Iron and Manganese ore held by Shri Balcrishna Bahirji Patil, Margao (Goa) for unlimited period, area 58.5100 Hectares in Village Curpem, Taluka Sanguem of Union territory of Goa, Daman and Diu.

And Whereas an enquiry has been made, as laid down in the Mining Leases (Modification of Terms) Rules, 1956.

2. It is hereby ordered under rule 6 of the aforesaid Rules that terms and conditions of the above lease shall stand modified as follows:—

(i) Period:—The period of the lease shall be 20 years counting from 1-10-1963.

(ii) The following clause shall be deemed to be inserted in the lease deed and shall form part thereof:—

"Except for the modifications made by this order, the lease shall be subject to the rules made or deemed to have been made under Sections 13 and 18 of the Mines & Minerals (Regulation & Development) Act, 1957 (No. 67 of 1957)."

3. It is clarified that royalty and dead rent shall be payable in accordance with Section 9 and 9A of the Mines & Minerals (Regulation & Development) Act, 1957 respectively instead of according to the stipulations in the lease deed.

4. It is further clarified that the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent at such rate, as may be specified by the State Government under the Mineral Concession Rules, 1960.

5. This order shall take effect from the date of this order.

6. It is ordered that this order be published in the Official Gazette of Goa, Daman & Diu and copies thereof be sent to the lessee and the State Government.

Sd/-

(H. N. WANARE)
Controller of Mining Leases for India.

Nagpur:

Dated the 29 April, 1980.

Note Embodying the Facts of Case, Pleas of the Parties and the Reasons for the Order:

Case No. Z-247: Order dated 29 April, 1980.

Name of the lessee: Shri Balcrishna Bahirji Patil, Mine Owner, Post Box No. 119, Margao (Goa).

Date of the lease: Title No. 97 of mining lease dated 5-12-1952. (T.T. 3-5-1954).

Mineral: Iron and Manganese Ore.

Area & Location: 58.5100 hectares in Village-Curpem, Taluka-Sanguem (Goa).

Period: Unlimited.

Apart from the insertion of the general clause, the following was the proposal contained in the show cause notice issued to the lessee for modification of the mining lease referred to above.

(i) Period: To be reduced to 20 years counting from 1-10-1963.

2. In pursuance of rule 6 of the Mining Leases (Modification of Terms) Rules, 1956, the show cause notice containing the proposals for modification of the above mentioned mining lease was sent to the lessee—Shri Balcrishna Bahirji Patil and the lessor—the Government of Goa, Daman and Diu, calling upon them to show cause why such modifications/alterations should not be made in the mining lease deed dated 5-12-1952 held by the lessee.

3. The case was also taken up for hearing on 22-1-1979 for enabling both the parties to put forward their case.

4. The Government of Goa, Daman and Diu have expressed that they have no objection for the proposal to modify mining concessions granted under the erstwhile Portuguese Law into mining leases under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957.

5. At the time of hearing, the learned counsel on behalf of the lessee, however, requested for stay of modification proceedings in his client's case till the Special Civil Applications preferred by the other Goa-lessees are decided by the Judicial Commissioner, Goa, Daman and Diu. In the interest of expediting the modification work, I do not consider it expedient to keep this case pending indefinitely on the plea raised by the advocate.

6. I have however, given my careful consideration to the objections embodied by the lessees in his objection-petition dated 16-9-1978, and, in my view, they have got no force on the basis of my findings given hereunder:—

- (a) As regards the lessee's contention that he has patrimonial rights over his mining concession and apart from being transferable and heritable are in effect proprietary rights, it is stated that Article 2 of the Portuguese Colonial Mining Laws approved by the Decree dated 20th September, 1906 makes it clear that the proprietorship of deposits of metals and metalliferous minerals belongs to the State and such beds cannot be prospected or worked without licence and concession by Government in terms of the said Decree. Moreover, the concession granted for unlimited period is liable to be cancelled, if the concessionaire fails to comply with the conditions which the law and the title of concession impose on him. Besides, the point whether the interests and rights conferred on the lessee by the erstwhile Portuguese Colonial Mining Laws are a lease or are in the nature of an outright grant or sale, has been concluded beyond doubt in the order dated 15-5-1975 of the Central Government Tribunal on the revision-applications filed by the grantees of such mining leases. In view of these, the lessee's contention that he has full proprietary rights on the Government land does not merit any consideration.
- (b) The lessee further contends that under clause 2 of Section 4 of the 1962 Regulation, any right acquired under the 1906 Decree is not affected, but saved inspite of extension of the Mines & Minerals (Regulation & Development) Act, 1957, as such right is a vested and subsisting right. In this connection, it is stated that the old Portuguese Mining Laws stands completely repealed with the extension of Mines & Minerals (Regulation & Development) Act, 1957 to the Union territory of Goa, Daman and Diu. Accordingly, the modification of old mining leases in the said territory for bringing those in conformity with the provisions of the said Act of 1957 and the rules made thereunder cannot be stopped and will have to be carried out keeping in view that Section 16 of the said Act was enforced there with effect from 15-1-1966.
- (c) As regards the lessee's contention that he holds a mining concession and not a mining lease and that the Mines & Minerals (Regulation and Development) Act, 1957 does not apply to the mining concession held by him, it is stated that "mining concession" granted under the Portuguese Colonial Mining Laws and "mining lease" granted under the Mines and Minerals (Regulation & Development) Act, 1957 are the same. Both in Goa at the time of erstwhile

Portuguese Regime, and in India, the ownership of the mineral rights vests with the Government and that minerals cannot be prospected or mined without licence or concession granted in Goa or without the lease granted in India. Under both the laws (the Mines & Minerals (Regulation & Development) Act of India and the Portuguese Colonial Mining Laws), the right to continued retention of the concession in Goa or the lease in India is subject to the fulfilment of a number of stipulations, failure to comply with which, may result in the forfeiture of the mining rights. In such cases, the ownership of the concession is reverted to the State. Moreover in Article 9 of the Portuguese Colonial Mining Laws, the concessionaires have been equated with the lessees. Paras 3 to 8 of the Central Government Tribunal order dated 15-5-1975 on this point also supports the fact that the mining, concession and the mining lease are synonymous. In view of the position stated above, the applicability of the Act of 1957 to the concessions is beyond doubt.

- (d) Further, the lessee's contention that the provision of Section 16 of the Mines & Minerals (Regulation & Development) Act, 1957 as substituted by the 1972 Amended Act are ultra vires of the Article 31(2) of the Constitution, as no provision is made in the Act for any compensation for modification of the period of the lease. In this connection, it is clarified that a mining lease is not a proprietary right, because the ownership of minerals in land always belongs to the State. A mining right merely confers on the lessee a right to exploit the minerals in accordance with certain stipulations in the lease-agreement. For this reason, there cannot be any money value for reduction of the period of the mining lease held by the lessee.

Moreover, Article 31A(1)(e) of the Constitution *inter-alia* provides that no law providing for the extinguishment or modification of any rights accruing by virtue of any lease for winning any mineral shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, 19 or 31 of the Constitution.

7. In view of the above, I hold the so-called mining concessions of the Goa-territory as mining leases. The concessions granted by the erstwhile Portuguese Government are in essence mining leases. Further, I see no valid reason in the lessee's contention protesting the applicability of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 to his so-called concession. In this regard, it is stated that the Mines and Minerals (Regulation & Development) Act, 1957 (excluding Section 16) was extended to the Union territory of Goa, Daman and Diu with effect from 1-10-1963, and Section 16 thereof from 15-1-1966. As Section 16 of the Act confers the power for modification of the mining leases to be brought into conformity with the provisions of the Mines and Minerals (Regulation & Development) Act, 1957 and the rules made thereunder, the mining lease dated 5-12-1952 held by the lessee cannot escape modification. Since the period of the mining lease in question is not in agreement with the provision of Section 8 of the Mines and Minerals (Regulation & Development) Act, 1957 it needs to be reduced to 20 years from 1-10-1963, the date from which the Mines and Minerals (Regulation & Development) Act, 1957 was extended to the Union territory of Goa, Daman and Diu. Therefore, the proposal made in the show cause notice relating to curtailment of the period of the mining lease dated 5-12-1952 is in accordance with law.

8. In my view, no adequate reason has been shown for a departure from the proposals contained in the show cause notice.

Order passed accordingly,

Sd/-

(H. N. WANARE)

Controller of Mining Leases for India.